UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/SR.28
12 April 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 April 1996, at 10 a.m.

Chairman: Mr. VERGNE SABOIA (Brazil)

CONTENTS

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-11970 (E)

CONTENTS (continued)

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued)

The meeting was called to order at 10.15 a.m.

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 21) (E/CN.4/1996/103)

1. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that human rights were the link in the chain between peace and development. Significant progress had been made in establishing international human rights standards and the time had come to make those rights a reality for people everywhere. To that end, it was incumbent on the United Nations system to provide effective assistance to Member States in their efforts to ratify international human rights instruments, make constitutional and legislative reforms, build national institutions, implement international human rights standards and introduce appropriate human rights education and training. To do so, the United Nations must harness the energy and coordinate the efforts of the wider human rights community made up of Governments, intergovernmental organizations, regional organizations, experts, academic institutions, non-governmental organizations (NGOs), the media and individuals.

2. The Commission on Human Rights could work more effectively if it revised its procedures. It should consider the possibility of making resolutions more result-oriented, so that progress could be measured and built upon from one year to the next. In particular, operative paragraphs referring to specific situations might clarify questions such as: the human rights problems that had been identified, the remedial actions suggested or taken, the durable solutions considered and the resources allocated for those actions. Condemnation of human rights violations should not be an end in itself but part of the process of identifying lasting solutions to serious problems. Such solutions might require action by the United Nations, and the Organization or its Member States must provide the corresponding financial resources. The recent resolution on Burundi was an example that the Commission might bear in mind. More generally, the Commission must base its work on the spirit of the Vienna Declaration and Programme of Action.

3. In considering possible reforms in its working methods, the Commission might wish to begin with his own report, (E/CN.4/1996/103) and the report on the follow-up to the Vienna Declaration and Programme of Action. Those reports would enable it to take stock of the progress made at the national and regional levels, with emphasis on an action-oriented approach and the realization of rights.

4. In his continuous process of dialogue with Governments, he endeavoured to emphasize the obligation of States to promote and protect all human rights and persuasion had proved to be a useful tool. He was also monitoring the progress made in implementing the recommendations of the treaty bodies and other Commission mechanisms, whose excellent work he commended. He also consulted the NGOs, both international and national.

5. While most standard-setting work had already been completed, progress was being made on the two optional protocols to the Convention on the Rights of the Child and in connection with the declaration on human rights defenders.

6. Adequate inter-agency cooperation and coordination was essential to ensuring a fully integrated approach to human rights. References in resolutions of United Nations bodies to action by his Office, particularly with respect to coordination within the United Nations system, should be encouraged, since they strengthened his authority.

7. The celebration in 1998 of the fiftieth anniversary of the Universal Declaration of Human Rights, coinciding with the five-year review of the Vienna Declaration and Programme of Action, would provide an important opportunity for broadening support for human rights and engaging the larger human rights community in those efforts.

8. He was endeavouring to increase support for the mechanisms set up by the Commission and, in particular, to enhance the identities of the special rapporteurs. Earlier in the year, he had convened the first coordination meeting for special rapporteurs working in the Great Lakes Region of Africa, resulting in a pledge to develop an integrated approach to the problems of Burundi, Rwanda and Zaire.

9. The treaty bodies played an important role in early-warning and prevention activities. The chairpersons of the treaty bodies had met the Secretary-General for the first time in 1995 and would do so again in 1996. The strategy that he had himself outlined in relation to the work of the Committee on the Rights of the Child could be used as a model for the other treaty bodies. He was also endeavouring to coordinate United Nations human rights efforts by harmonizing three main aspects: the standards set by human rights instruments, the priorities established by experts and the actions of financial institutions and development agencies. Close cooperation among the relevant United Nations agencies and programmes could, in particular, help to bring the international community closer to meeting the provisions of the International Covenant on Economic, Social and Cultural Rights.

10. He welcomed the increased interest of the development and financial institutions in human rights programmes, including social programmes, programmes to promote the rule of law and programmes to build civil infrastructures and encourage popular participation. Such interest demonstrated that human rights were considered to be the foundation for sustainable economic and social development.

11. He was endeavouring to strengthen the advisory services and technical cooperation programmes. He fully endorsed programmes to build national capacities for the promotion and protection of human rights, which should be of sufficient duration to ensure their permanency. United Nations field staff could greatly facilitate the success of such programmes, as in the cases of Malawi and Cambodia.

12. A Plan of Action had been elaborated to stimulate and support local and national activities under the United Nations Decade for Human Rights Education. Governments should prepare national plans of action and set up national committees for human rights education with representation from the public and private sectors.

13. In its resolution 48/141, the General Assembly had given him a mandate to promote and protect the realization of all human rights, including the right to development. He had endeavoured to give practical and tangible substance to that right, as reflected in his decision to assign one of the branches of the Centre for Human Rights to oversee activities in that area, a decision that had been endorsed by the General Assembly. A meeting of experts would be held in mid-1996 to examine ways and means of effectively implementing the right to development, and he would report on those efforts to the Commission at its next session.

14. He had played an active role in efforts to integrate the gender dimension into human rights activities and had submitted comments on the draft report of the Fourth World Conference on Women to ensure that human rights standards were respected in the final document. Various activities would be undertaken, in close cooperation with the Secretariat and the agencies working for the advancement of women, to implement the relevant provisions of the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform of Action.

15. The outcome of his official visit to Indonesia and East Timor was contained in a separate report. Discussions with the Government of Indonesia were being held with regard to a comprehensive programme of cooperation in the field of human rights and the establishment of a United Nations presence in Jakarta. He hoped that he would soon be able to announce the signing of a memorandum of understanding with that Government.

16. Following the visit in May 1995 to the Russian Federation, including the Chechen Republic and Ingushetia, by a representative of his Office, he was working with the Russian Government to promote and protect human rights in the region and to foster confidence-building measures based on respect for human rights. His representative had paid a second visit to the Russian Federation at the end of March 1996, during which he had met high-level representatives of the Government and the Constitutional Court, whose openness and cooperative spirit were much appreciated. Considerable progress had been made with regard to practical cooperation. He welcomed the programme for the settlement of the crisis in the Chechen Republic recently announced by President Yeltsin which, if fully implemented, could represent a breakthrough, and was prepared to provide all possible support to the process.

17. He had visited Nepal in February 1996 to open the fourth Asia/Pacific Workshop on Regional Human Rights Arrangements, organized by his Katmandu Office. The workshop, attended by representatives of 40 Governments, had significantly advanced the debate on the need for and the modalities of human rights efforts in the region and subregion.

18. The main purposes of his second visit to Cambodia had been to strengthen the presence of the Cambodian office of the Centre for Human Rights, and to sign a Memorandum of Understanding between the Government of Cambodia and the Centre. Both objectives had been achieved.

19. Since taking office, he had been endeavouring to integrate the promotion and protection of human rights with technical assistance programmes in an effort to rebuild and strengthen civil society in Rwanda, Burundi and the

former Yugoslavia. He had also been making efforts to comply with the Commission's request that an office be opened in Zaire and had submitted the text of the relevant agreement to the Zairian authorities.

20. The field operation in Rwanda, the first and largest of such operations, had been one of the most difficult, since it involved not only inquiries into human rights but also re-establishing a climate of confidence which would encourage the return of refugees. The success of the operation was to be measured by the support it received from the Government of Rwanda, the international community and NGOs. The Government of Rwanda had recently requested an increase in the number of field officers.

21. The Dayton Peace Agreement was a sign of hope after the tragic events in Bosnia and Herzegovina and Croatia, including serious human rights violations. He would continue to provide support to the relevant Special Rapporteur and the Expert on the special process dealing with missing persons in the former Yugoslavia; provide training for international civil personnel; and provide specialized human rights experts associated with the High Representative. Several training programmes had already taken place.

22. Since his appointment, he had been paying special attention to the human rights situation in Burundi and had opened an office in Bujumbura, which mainly provided technical assistance. The Commission's consensus resolution on Burundi was very welcome and he would be dispatching human rights observers to that country to foster a climate of peace, confidence and tolerance, the first five of whom were already being deployed.

23. Field operations in Rwanda, Burundi and the former Yugoslavia depended on voluntary contributions. Financial uncertainty had delayed the planning and setting up of field operations and had damaged their efficiency. Efforts to fund field operations from assessed contributions had not been successful. If the United Nations deemed such operations to be essential, however, the necessary resources must be provided. Significant contributions had been made by the European Commission to the human rights field operations in Rwanda and Burundi and, indeed, European Member States had borne the major financial burden of those operations. He wished to acknowledge the important role played by those States in United Nations human rights activities and hoped others would follow suit.

24. The picture of human rights violations established by the various United Nations mechanisms continued to show the same disturbing patterns and trends. Impunity paralleled those violations, in many parts of the world and those responsible for executions, torture, arbitrary detention and disappearances continued to go free. The provisions of universally accepted human rights instruments were often not respected.

25. While they represented positive steps in the combat against impunity, the international criminal tribunals for the former Yugoslavia and Rwanda were a complement to rather than a substitute for domestic justice. The international community must deliver a clear message that impunity could not be tolerated. A country lacking a system which ensured social justice and human dignity would inevitably disintegrate in internal conflict.

26. At least 1 person out of every 50 in the world had been displaced because of war, lack of guarantees of fundamental rights, the destruction of the natural environment or collapse of the economic and social infrastructure. Early warning was thus an important tool for alerting the international community to potential human rights crises so that appropriate steps could be taken. The number of early-warning initiatives reflected the importance of the issue. Violations of human rights were a cause of conflicts but they were also the result of conflicts. Early warning should therefore be part of prevention activities. That priority matter would be further developed by the Centre for Human Rights.

27. He had begun the process of restructuring the Centre. Following an analysis by its own staff and a review of its current organization and practices, with assistance from a consultancy firm, a Change Plan had been drawn up providing for reorganization projects in five areas: managing finances, managing human resources, managing information, managing relations with other partners, and restructuring the Centre. The Change Plan had been endorsed by the Secretary-General and his senior management. Based on a tripartite approach, in which his Office, the United Nations administration and the consultancy firm would each be making a contribution, the phased implementation of the five projects was currently under way.

28. The new administrative structure of the Centre would give priority to the right to development and economic, social and cultural rights and would be based on the principle of unity between the High Commissioner and the Centre under his authority. Specific functions would be assigned to the Assistant Secretary-General for Human Rights, who would also act as his deputy. Three other organizational units would help implement the substantive programme.

29. The restructuring was the beginning of a process of reform aimed at increasing the effectiveness of United Nations action in the field of human rights while ensuring transparency of methods and high quality of services. The Centre must become a model of excellence and a positive example for other parts of the United Nations system.

30. He would be seeking the views of the treaty bodies, special representatives, working groups, and special rapporteurs with regard to ways to rationalize, adapt and strengthen the United Nations human rights machinery.

31. The resources approved in the regular budget for 1996-1997 represented the minimum needed to carry out the mandated activities. In February 1996, budgetary resources had been cut by US$ 2.9 million in post and non-post items owing to the Organization's financial crisis, thus reducing the approved budget by more than 6 per cent. While every effort would be made to minimize the possible consequences of the cut, the medium- and long-term capability of human rights programmes depended on an adequate and reliable share of the regular budget resources and voluntary contributions from Governments and others. The ever-increasing demands on his Office for assistance in such areas as confidence-building, technical cooperation, education, and observation and monitoring could not be satisfied by regular-budget funding alone.

32. It was thus incumbent on States, collectively or individually, to make a greater financial contribution. The challenges of human rights promotion and protection necessitated commensurate political will and financial support. Human rights funding from the regular budget was currently little more than 1.5 per cent of the total budget. Extrabudgetary resources provided funds for specific activities.

33. Extrabudgetary funds for the field operation in Rwanda amounted to US$ 8.7 million in cash and US$ 7.7 million in kind. However, that amount had been provided gradually, making it difficult to plan and manage the operation. The human rights programme should be able to rely on predictable sources of funding from voluntary sources. To meet current requirements, an annual amount of US$ 25 million was needed and he appealed to Member States to make generous contributions.

34. There was no need to establish a new fund. A Fund to support the activities of the Centre already existed and was used to finance certain field activities. Within that Fund, specific sub-accounts for each field activity had been created to receive earmarked contributions while a sub-account for unspecified contributions would also be set up. To ensure transparency in the administration of the Fund, he planned to establish an informal advisory board made up of the coordinators of the regional groups in Geneva. The Fund had the potential to become a revolving fund to deal with emergency human rights situations of any kind.

35. He hoped to forge a new alliance, based on a spirit of cooperation and dialogue, with all the actors involved in the promotion and protection of human rights. His efforts would remain focused on making human rights standards more operative and in making the Secretariat more responsive to that goal. More dialogue between the various parts of the system, both inside and outside the United Nations family, was needed, while adequate resources and greater coordination were essential.

36. Guided by the spirit of the Vienna Declaration and Programme of Action, he counted on the support of Member States, international organizations, United Nations agencies, national institutions and NGOs. The annual session of the Commission on Human Rights should be the culmination of the integrated and coordinated efforts of the partners inside and outside the United Nations system.

37. Mr. H.K. SINGH (India), noting that the Vienna Declaration and Programme of Action had called, inter alia, for integrated approaches to human rights promotion and protection, asked the High Commissioner how the Programme of Action was taken into account in restructuring the Centre. It would be interesting to learn also how he proposed to respond to Member States' requests for the setting up of a new branch in the Centre whose primary responsibilities would include the promotion of the right to development as well as for programmatic follow-up through the Centre's Plan of Action for the 1996-1997 Biennium.

38. Referring to Commission resolution 1995/43 and noting the lack of reference in the High Commissioner's Report to the problem of terrorism, he asked the High Commissioner to outline his approach to that issue and to explain how he and the Centre proposed to tackle the problem.

39. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that, in accordance with the Vienna Declaration and Programme of Action, he had been emphasizing that all human rights should be approached in the same balanced way without giving preference to some aspects over others. The restructuring of the Centre was taking account of that philosophical approach. The different branches of the Centre, as previously established, had not permitted a unified approach to the promotion and protection of human rights, but three areas had been identified where substantive work would be carried out. They concerned the analysis of information and research in order to provide substantive inputs to other units of the Centre, the implementation of actions to translate human rights policies into reality and the servicing of the different mechanisms created by the human rights programmes. Those three units would be mutually reinforcing, in compliance with the unified mandate emanating from the Vienna Declaration and Programme of Action.

40. In asking for the establishment of a new branch, the General Assembly had not, he thought, wanted to be involved in management activities or administrative decisions. What was important was that the right to development should be one of the key issues of the Centre's work.

41. He shared the deep concern of all delegations about terrorism. Human rights violations must be addressed no matter who the perpetrator was. Terrorism had been condemned by the institutions of the United Nations system and the Centre was guided in its work by the decisions taken by those institutions.

42. Mr. McALISTER (Canada) said that the question and answer session immediately following the presentation of the High Commissioner's report should be continued, as it permitted constructive dialogue between the High Commissioner and the members of the Commission.

43. His delegation would continue to be fully supportive of the High Commissioner, particularly with respect to efforts to provide him and the Centre with adequate resources from the regular budget. His delegation was seriously concerned about the current situation in which key mechanisms, such as the special rapporteurs and the treaty bodies, did not have the support they required to fulfil their potential.

44. His delegation would appreciate additional information on the progress made in establishing an ongoing dialogue with other United Nations bodies represented on the Administrative Committee on Coordination (ACC) as well as efforts to establish a framework of cooperation with the bodies involved in conflict prevention and conflict resolution.

45. Mr. AYALA-LASSO (United Nations High Commissioner for Human Rights) said that, in 1994, he had secured the regular inclusion in the ACC agenda of an item on human rights. That represented considerable progress, because it permitted the Centre's involvement in all the working groups and mechanisms

established by ACC for the analysis of the various aspects of its agenda, especially the working groups responsible for monitoring the implementation of decisions adopted by the major United Nations conferences. He hoped that a working group on the recommendations of the Vienna Conference would be established and that the Centre would be responsible for coordinating its work. The Centre also had contacts with individual United Nations agencies and was currently considering improvements to its memorandums of understanding with those agencies in order to ensure cooperation within the United Nations system.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1996/5-E/CN.4/Sub.2/1995/36, E/CN.4/1996/28 and Corr.1, 29 and Add.1-3, 30, 31 and Add.1, 32 and Add.1, 33 and Add.1, 34, 35 and Add.1 and Corr.1 and Add.2, 36, 37, 38 and Corr.1, 39 and Add.1 and Add.2, 40 and Add.1, 41, 121-124, 133 and 143, E/CN.4/1996/NGO/10, 24, 25, 26, 36, 46, 55 and 61; E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1 and 30 and Add.1; E/CN.4/1995/100; A/50/512)

46. Mr. HUSSAIN (Special Rapporteur on freedom of opinion and expression) said that freedom of opinion and expression was the mother of all freedoms. Wherever that right was violated, other gross violations of human rights tended to occur in parallel. Governments of all political persuasions violated that right and muzzled the media in many ways.

47. His visit to the Republic of Korea (E/CN.4/1996/39/Add.1) had resulted in the adoption by that country's Government of a number of concrete measures designed to promote and protect the right to freedom of opinion and expression as well as in the release of a number of detainees. During his visit to the Islamic Republic of Iran (E/CN.4/1996/39/Add.2), he had found a greater willingness on the part of that country's Government to accommodate considerations on the promotion and protection of the right to freedom of opinion and expression and to encourage a dialogue on those matters. Unfortunately, he had been unable to visit Turkey as planned. He was also looking forward to establishing close cooperation in the near future with the Government of the Democratic People's Republic of Korea as well as with a number of other Governments with whom he was currently in close touch.

48. He had received cooperation not only from Governments, but also from NGOs, which had a vital role to play in creating a public opinion supportive of human rights and he planned to continue and intensify joint activities with them.

49. The state of affairs in relation to the protection of the right to freedom of opinion and expression was a grave one. He had not yet received replies to letters sent in 1994 to the Governments of 32 of the 40 countries mentioned in his earlier report. He could not fulfil his mandate effectively without proper and timely response to the grievances referred to Governments.

50. Over the previous decade, 456 journalists had been killed in the line of duty in more than 60 countries throughout the world. They had been victims of political persecution, terrorism and organized crime. That was a horrifying figure which gave serious cause for concern.

51. Differences of religion, ideology, ethnicity and culture were being invoked to suppress thoughts, opinions and beliefs contrary to those held by the Government or proclaimed by the State. Global civilization required societies that were multicultural and pluralist in nature and everyone should have both freedom for ethnicity and freedom from ethnicity. The same applied to culture, religion and ideology.

52. The upsurge of hate speech gave cause for continued concern. An early-warning system should be established to alert everyone to the dangers of hate speech and prevent it in a manner consistent with the protection of the right to freedom of opinion and expression. Press professionals and press ombudsmen could lay down codes of professional ethics and render public opinion more sensitive to that grave problem. Governments could contribute by respecting a free press and facilitating public debate on the issue, bearing in mind that hatred festered in precisely those places where censorship and thought control prevailed. Censorship was not the answer to media problems of violence, sex and pornography. Public consciousness could be raised through a combination of popular initiatives and pressure groups, education and the judiciary.

53. All Governments felt the need to protect the genuine national security interests of the societies they governed while protecting the right to freedom of opinion and expression and a just balance had to be struck between freedom and authority. To assist all Governments in striking such a balance, he had annexed to his report the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

54. Mr. Chang-Il PARK (Republic of Korea), having mentioned that his Government had recently acceded to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment because of the high priority it accorded to the promotion of democracy and human rights, said that the findings and recommendations of the Special Rapporteur on the right to freedom of opinion and expression in the report on his mission to the Republic of Korea (E/CN.4/1996/39/Add.1), would be an important source of guidance in efforts to protect and promote human rights and would be reflected in the country's national policies and legislative measures as appropriate.

55. As for some of the issues mentioned by the Special Rapporteur and by certain NGOs, he pointed out that his Government maintained the National Security Law (NSL) in order to safeguard security and the country's system of liberal democracy which had been under constant threat since the end of the Korean war. It had undertaken a revision of that Law in recent years and had amended some of its more controversial elements. Future application of the NSL would be strictly limited to safeguarding national security, with due regard for fundamental human rights, and would not affect academic research, or the expression of ideologies opposed to the liberal democratic system.

56. The so-called long-term prisoners could not be considered prisoners of war as defined by the Geneva Convention relative to the Treatment of Prisoners of War, since they were guerrilla fighters guilty of crimes against humanity. Such prisoners were treated in the same way as other ordinary prisoners. Many prisoners were granted early release on the basis of compliance with the stipulations of the Penal Institution Act. Any remaining prisoners, including long-term prisoners, were still imprisoned because they had failed to meet the requirements for early release. Since 1993, his Government had granted amnesty to prisoners on five occasions and many long-term prisoners had benefited therefrom.

57. Concerning labour law reform, his Government was making continuous efforts to build a consensus through its dialogue with both trade unions and management on an overall package of amendments to the current laws. It hoped that agreement would be reached in the near future.

58. Mr. van WULFFTEN PALTHE (Netherlands), having reminded the Commission that his delegation had proposed that country-specific findings be compiled from the various special rapporteurs and grouped into country dossiers for easy reference, said that the Special Rapporteur on the independence of judges and lawyers was to be commended for the objective way in which he had dealt with the issue of "faceless" judges in Colombia and Peru. It was to be hoped that the Governments of both countries would enable the Special Rapporteur to carry out his planned investigative missions there.

59. The Governments of Peru, Pakistan and Nigeria had regrettably failed to heed requests by the Special Rapporteur for joint missions with other special rapporteurs and mechanisms. The human rights situation in Nigeria, in particular, seemed to warrant such a joint mission and his delegation urged the Government of that country to ensure that the Civil Disturbances Tribunal either operated on the basis of due process or was abolished.

60. The Special Rapporteur on the question of torture had investigated many cases in many States, some of which invoked their struggle with long-standing separatist movements or guerrilla warfare as circumstances that eroded human rights standards. That problem was largely a matter of political will. Torture was politically counterproductive and was likely to affect the general state of the country. All States with serious incidences of torture should recognize their problems and cooperate fully with the Special Rapporteur by providing him with all the detailed information and access he requested.

61. Though the situation in the territory of the former Yugoslavia was finally improving, the report on missing persons in that territory (E/CN.4/1996/36) revealed the enormous task that lay ahead. The excavation of mass graves must be carried out in a professional, impartial and well-coordinated manner, proof of war crimes being preserved for use by the International Criminal Tribunal. The report proposed the establishment of a high-level multilateral commission on missing persons to coordinate the excavation of mass graves, and his Government was ready to consider contributing to that effort.

62. Mr. H.K. SINGH (India) said that no society was entirely free from human rights violations, and India made no such claim. His Government had, in recent years, engaged civil society in open discussions designed to improve the legal system and institutional mechanisms. As a result, action had been taken to introduce effective safeguards against arbitrary behaviour and to strengthen the rule of law and respect for human dignity. The Supreme Court had ruled that the judiciary could initiate action based on petitions submitted by NGOs or individuals and could take cognizance of relevant media reports.

63. India had found that normal criminal laws were inadequate to deal with the extraordinary circumstances of terrorism. The laws that provided for preventive detention were not arbitrary but had been duly enacted by Parliament and incorporated safeguards to protect individual rights. There appeared to be a tendency to overlook human rights violations by terrorists, but there were plenty of avenues other than terrorism for expressing dissent, including the ballot box. Most Indian citizens preferred the ballot to the bullet, and that was an aspiration that his Government would meet. The impact of terrorism on human rights, particularly in democratic societies, should be paid greater attention by the Commission, which should ask itself some searching questions on how to deal with human rights violations by non-State actors.

64. His Government had invariably cooperated with the various Commission mechanisms, endeavouring to ensure that individual cases were investigated expeditiously and detailed replies given. Though well aware that there were gross violations of human rights in neighbouring countries, it believed that it was for the States concerned to face those problems and that the abuse of others, efforts to divert blame or outright interference in internal affairs were not conducive to the promotion and protection of human rights.

65. Mr. CHAVEZ (Peru) said that, six years previously, his country had instituted far-reaching changes to surmount the most serious crisis in its history, a crisis that had undermined respect for human rights. With great difficulty, Peru had regained control of its economy and repelled terrorism. The foundations had thus been laid for the full enjoyment of all human rights.

66. His Government had received a number of visits from the Commission's mechanisms and was prepared to continue its full cooperation with them. It regretted, however, that the report of the Special Rapporteur on the question of torture (E/CN.4/1996/35) did not highlight the steep reduction in recent years in the number of alleged cases of torture but instead gave the impression that the number was even greater than those reported.

67. The institution of "faceless judges" had not originated in his country; it had been adopted because of the results it had yielded in other countries confronted with similar problems of terrorism and intimidation of judges. It was ironic that a legal instrument for the protection of judges, which might have prevented many deaths if it had been adopted earlier, should meet with so much criticism.

68. Mr. TIBARUHA (Uganda) said that his country had experienced massive and systematic violations of human rights in the 1970s, but that had ended in 1986 with the accession to power of a new President. Since then, his authorities had demonstrated their commitment to human rights in a number of ways. Uganda had ratified almost all the major human rights instruments. The new Constitution promulgated in October 1995 expressly prohibited the detention of any person for more than 48 hours without formal charges and outlawed the practice of torture under any circumstances.

69. To ensure that words were matched by deeds, his Government had put in place constitutional, legal and administrative mechanisms to protect the human rights of all detainees. The Constitution provided that all persons complaining of human rights violations had access to judicial institutions responsible for human rights protection and the Government had established three institutions to monitor the observance of the human rights of inmates in detention areas.

70. Mr. POERNOMO (Indonesia) said that those in charge of United Nations special procedures for human rights monitoring were vulnerable to double standards, while their mandates were susceptible to politicization. The recommendations offered were sometimes unrealistic, prejudicial to the targeted States and actually unfeasible. The Commission must rationalize its procedural and institutional arrangements or develop procedures that would be really effective.

71. The Working Group on Arbitrary Detention had identified a number of cases of arbitrary detention in Indonesia. His Government was not in a position to take any remedial steps, since the cases in question were subject to independent legal investigation, and intervention would violate constitutional and other legislation on the independence of the judiciary. In fact, of the four Indonesian citizens that the Working Group considered had been detained arbitrarily, one had been acquitted by the Supreme Court, on appeal, and two others had been released after serving the sentences duly imposed upon them after conviction by a court of law.

72. The Governments of Cuba and Indonesia had been singled out as having refused to invite the Working Group to visit their countries. That practice contradicted the principles of non-selectivity and impartiality and would ultimately undermine the Group's credibility. The Group's request to visit Indonesia to investigate the case of Xanana Gusmao was not warranted, as the individual in question had already been duly tried, and sentenced.

73. Mr. NDIAYE (Observer for Senegal) said that, over the past two years, his Government had instituted measures to integrate all the main provisions of international human rights instruments into its legislative, procedural and administrative system. In the case of torture, preventive arrangements were of fundamental importance.

74. His delegation welcomed the progress made by the Working Group responsible for drafting an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under which a system of preventive visits to places of detention would be set up. The Group's mandate should be renewed so that it could complete its work.

75. The spirit of consensus that had prevailed throughout the proceedings, should be carried over into the system of visits itself. Preventive visits would not necessarily be connected with allegations of torture, and the whole system would have to be based on the principle of cooperation and effectiveness. The visiting experts should be able to circulate freely, talk to detainees in private, and contact freely relatives, lawyers, doctors and NGOs.

76. The expert's report should be drawn up on the basis of the facts found, taking account of any comments made by the State concerned, and then be officially transmitted to the State with any recommendations deemed necessary. Publication of the report without the consent of the State concerned should occur only when the State had manifestly failed to cooperate. The protocol should be financed out of the United Nations regular budget.

77. Without suggesting that underdevelopment was an excuse for failing to comply with the protocol's requirements, he thought it should be recognized that the level of human and financial resources available to a State inevitably had an effect on the living conditions of detainees. His delegation therefore supported the South African proposal for the establishment of a voluntary fund to improve the status of detainees.

78. Mr. SELEBI (Observer for South Africa) said that, although torture could never be justified under any circumstances, the practice continued unabated. Its prevention must be one of the cornerstones of any society concerned to promote and protect human rights. His country's Constitution contained provisions against torture and legislation, provided that the perpetrator of any act of torture could be held responsible officially and in a private capacity, that no information obtained through torture could be used as evidence, and that cases of torture were to be prosecuted under the criminal offence of "assault".

79. In his latest report (E/CN.4/1996/35), the Special Rapporteur, whose work his Government supported, had mentioned allegations of torture in South Africa. His Government had investigated those allegations, which it took very seriously. Investigation of some cases was at an advanced stage, in others, members of the police had been charged, while, in yet other cases, the complainants had declined to file charges. A full response to all the allegations would shortly be made to the Special Rapporteur, and the document would be available to any interested party.

80. It was important that the international community should provide support to victims of torture. His Government had thus, for the first time, made a modest contribution to the United Nations Voluntary Fund for the Victims of Torture.

81. His delegation welcomed the progress made by the Working Group elaborating an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since it believed that a system of inspection of places of detention was a very important measure to prevent torture and other ill-treatment. The Group should continue its constructive work and, in an atmosphere of good will, should be able to complete that work at its next session.

82. Mr. AL-ABOUD (Observer for Saudi Arabia) said that his country, the site of the Two Holy Shrines and the Qibla, was proud of its system of government based on the Shari'a, which more than 1 billion Muslims viewed as the true source of security, truth and justice. The Shari'a could not be subjected to anyone's judgement, since it was God's law.

83. The allegations made by some NGOs against Saudi Arabia were designed to undermine its judicial system and combat the Islamic law to which it was committed. Certain parties had described judgements issued by courts in Saudi Arabia as torture and had shamelessly called upon the Kingdom not to carry out sentences provided for by Islam.

84. If a Shari'a court delivered a sentence, the competent authorities were obliged to implement it. In any case, after being found guilty in a lower court, a suspect could appeal, first to an appeal court and then to the court of cassation. Nobody was incriminated unless proved guilty. Both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the corresponding Convention stipulated that torture did not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

85. His Government was not opposed to what others chose for themselves as means of guaranteeing their security and stability and was always ready to consider any justifiable complaint based on a mistake or personal misconduct, but it could not allow anybody to attack its values or its religion.

86. Mr. HINDLEY (Afro-Asian Peoples Solidarity Organization) said that the Mohajirs in Pakistan were being depicted as the "enemy within" in order to bolster national self-confidence. Nevertheless, the fact that the political party representing the Mohajirs continued to receive wide support at the ballot box should legitimize its cause internationally. The current conflict between that party and the Government of Pakistan was exacerbated by criminal elements profiting from the general confusion originally stemming from the use of Karachi as a conduit for arms deliveries to the anti-Soviet forces in Afghanistan. The European Parliament had adopted a resolution on the subject of the extrajudicial executions, tortures and disappearances, that had occurred and the situation was well-documented in a recent Amnesty International report.

87. The prime responsibility of the Government of Pakistan was to break the spiral of violence by curbing the excesses of its forces. The resolution of the conflict was vital for the future of Pakistan, which was unlikely to reap the benefits of trade liberalization if its chief port was paralysed and the very people whose entrepreneurial skills could act as a catalyst felt excluded and persecuted.

88. Ms. FAYOLLE (International Prison Watch) said that her organization was concerned about torture inflicted during detention in Morocco. Although progress had been made in the human rights field there some 30 persons regarded as political prisoners were still being held, not all political exiles who had applied for a passport to return to the country had received one, and the general amnesty had turned out to be a series of partial and individual pardons. Little progress had been made in tracing missing persons and death certificates had not been issued for all the persons who had died at Tazmamart, while those who had survived were in receipt of an inadequate and precarious monthly sum. There was still no news of political and trade union militants or of Saharan civilians who had disappeared many years previously.

89. Forced or involuntary disappearances fed on secrecy, and the officials responsible went unpunished. The head of a secret torture centre had even been sent to represent Morocco in the Committee against Torture, while the commander of the Tazmamart Centre was enjoying a peaceful retirement.

90. Mr. SENTURIAS (World Alliance of Reformed Churches) said his organization was deeply concerned at the cases of torture and ill-treatment of detainees in Equatorial Guinea. A presidential pardon had been granted to persons sentenced by court martial for their links to the political opposition, but the international community should continue to urge the Government of Equatorial Guinea to make greater efforts to improve the human rights situation there.

91. Notwithstanding some very positive political progress in the Philippines, unjust political and economic structures were still keeping the people poor. Action to improve that situation was often met by force entailing violations of human rights. His organization agreed with the Philippine Commission on Human Rights that giving additional powers to law-enforcement agencies would be counterproductive if not dangerous and open the door to martial law. Despite the Government's obvious desire to improve the situation and alleviate poverty, many violations of human rights, had been committed in the implementation of the Philippine Medium-Term Development Plan. Many of the recommendations by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture had not been implemented by the Government, despite its international obligations.

92. It was reassuring to learn that peace talks with Muslim and Communist rebels were continuing and it was to be hoped that solutions to the root causes of those conflicts could be found so that a just and lasting peace could be attained. In any case, the Commission should urge the Government of the Philippines to redouble its efforts to improve its human rights record.

The meeting rose at 1 p.m.